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In re Application of: VAN DYK, Andre
U.S. Application No.: 10/500,704
PCT No.: PCT/ZA02/00212
Int'l Filing Date: 17 December 2002
Priority Date: 03 January 2002
Attorney's Docket No.: 2004_1031A
For: ELEMENT FOR INITIATING
PROPELLANT

DECISION ON PETITION UNDER
37 CFR 1.47(b)

This decision is issued in response to the "Petition Under 37 CFR 1.47(b)" filed 25 February 2005. Petitioner has paid the required petition fee.

BACKGROUND

On 17 December 2002, applicant filed international application PCT/ZA02/00212 which claimed a priority date of 03 January 2002 and which designated the United States. On 10 July 2003, a copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) by the International Bureau (IB). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 03 July 2004.

On 02 July 2004, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the small entity basic national fee.

On 06 January 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that an executed oath or declaration acceptable under 37 CFR 1.497 and the surcharge for filing the declaration later than thirty months after the priority date were required.

On 25 February 2005, petitioner filed the petition under 37 CFR 1.47(b) considered herein. The petition seeks acceptance of the application without the signature of the sole inventor, Andre VAN DYK.

DISCUSSION

A grantable petition under 37 CFR 1.47(b) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) factual proof that the inventor refuses to execute the application or cannot be

reached after diligent effort; (3) a statement of the last known address of the nonsigning inventor; (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor; (5) proof of proprietary interest in the application; and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. The present petition satisfies items (1), (3), (4), and (6).

Regarding item (2), section 409.03(d) of the MPEP requires that the nonsigning inventor first be provided with a copy of the complete application papers, including specification, drawings and claims. The MPEP also requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made." Here, petitioner has provided copies of correspondence from the person who attempted to communicate with the nonsigning inventor. However, the petition does not include a firsthand statement from this person confirming the specific efforts made to obtain the nonsigning inventor's signature, and confirming that the inventor was provided with a copy of the complete application papers. Absent this firsthand statement, item (2) is not considered satisfied.

Regarding item (5), section 409.03(f) states that: "If the application has been assigned, a copy of the assignment (in the English language) must be submitted. The assignment must clearly indicate that the invention described in the 37 CFR 1.47(b) application was assigned to the 37 CFR 1.47(b) applicant. A statement under 37 CFR 3.73(b) by the assignee must also be submitted (see MPEP § 324)." Here, petitioner has provided a copy of an assignment in which the nonsigning inventor assigns the international application (and the right to "apply for patents anywhere" based on the application) to NXCO International Limited, the 37 CFR 1.47(b) applicant. However, petitioner has not provided the required statement under 37 CFR 3.73(b) by the assignee. Until such statement is provided, item (5) is not considered satisfied.

CONCLUSION

Applicants' petition under 37 CFR 1.47(b) is **DISMISSED** without prejudice. If reconsideration on the merits of the petition is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)" and must include the materials necessary to satisfy the outstanding requirements for a grantable petition, as discussed above.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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